United States-Oman Free Trade Agreement – Impact on State and Local Governments

I. Introduction

The United States-Oman Free Trade Agreement (FTA or Agreement) is a comprehensive free trade agreement that will provide American workers, consumers, and businesses unprecedented economic opportunities in Oman. Building on existing agreements with Bahrain, Israel, Jordan and Morocco, it is yet another step forward in the fulfillment of the President's plan for a Middle East Free Trade Area (MEFTA) by 2013, and will open trade with a friend and ally in the Persian Gulf. States and municipalities will see meaningful and timely benefits, as 100 percent of bilateral trade in consumer goods and industrial products will become duty-free immediately upon the entry into force of the Agreement, with the exception of certain textile products subject to a longer phase-out period. Under the Agreement, which covers all agricultural products, Oman also will provide immediate duty-free access for U.S. agricultural exports in 87 percent of agricultural tariff lines, and will phase out all remaining tariffs within 10 years. In 2005, the United States enjoyed a $78 million trade surplus with Oman, with U.S. goods exports to Oman totaling over $460 million, including aircraft, automobiles, machinery, and optic and medical equipment. Agriculture exports set to benefit from the Agreement include products such as vegetable oils, sugars, sweeteners and beverage bases. Additionally, Oman will provide substantial market access across its entire services regime; provide a secure, predictable legal framework for U.S. investors operating in Oman; provide for effective enforcement of labor and environmental laws; and, protect intellectual property. All of these are issues of considerable interest to states.

The Intergovernmental Policy Advisory Committee on Trade (IGPAC) is one of the statutory advisory committees of the Office of the United States Trade Representative (USTR). It is comprised of representatives and associations representing executive, legislative, and judicial branches of sub-federal government, as well as states, counties, and cities. The National Governors Association (NGA), the Council of State Governments (CSG), the National Conference of State Legislatures (NCSL), the National League of Cities (NLC), the National Association of Counties (NACo), and the National Association of Attorneys General (NAAG) are among the organizations represented on the IGPAC. In recent years, USTR has revitalized and significantly expanded the membership and geographic representation of the IGPAC to include "State Points of Contact" designated by the Governors' offices, as well as state legislators and attorneys general nominated by NCSL and NAAG, respectively. Ms. Kay Wilkie, a public official from the State of New York, currently serves as IGPAC Chair.

Pursuant to the Trade Act of 1974, each of the statutory advisory committees was required to provide a report, including an advisory opinion as to whether and to what extent the Agreement promotes the economic interests of the United States, as well as the expected impact within the committee's particular sectoral or functional area. The

IGPAC, with its particular focus on state and local impacts, recognized in its report on the FTA (available in full at www.ustr.gov) that:

> *"The US-Oman Free Trade Agreement is supported in principle by most IGPAC members as the agreement advances strategically critical and comprehensive trade development and market reform objectives in a manner generally beneficial to our national, regional and local economies."*

Moreover:

> *"[T]he agreement holds the potential to foster valuable trade ties with an important U.S. ally and deepen economic integration throughout the Middle East. IGPAC members understand that bipartisan efforts in Congress…indicate active federal support for economic reform and trade liberalization in the greater Middle East. The US-Oman FTA should substantially improve the business environment and advance civil society development objectives, while increasing trade capacity and investment opportunities between the US and this critically important world region…. US economic interests, entrepreneurs and employees would benefit from improved market access for goods, services, agricultural products, and from better access to government procurement opportunities. … Provisions to promote workers rights, labor standards and environmental protections, and to advance regional development through trade capacity building, technical assistance and the integration of civil society, are appreciated and essential."*

More generally, the committee states:

> *"Members of IGPAC support expanding trade and market access, while simultaneously maintaining a commitment to ensuring that trade laws, enforcement efforts and the dispute settlement process respect the authority of states and local governments to regulate and interpret land-use, labor, health, safety, welfare, and environmental measures."*

Based upon IGPAC's report and other comments received regarding the potential impact of free trade agreements on sub-federal governments, this report addresses three main areas of interest to states and localities in the Agreement: (1) government procurement; (2) investment; and (3) services. Additionally, USTR has taken into account states' and localities' overall interest in preserving sub-federal regulatory abilities and prerogatives.

II. Chapter Nine: Government Procurement

The Agreement requires that covered Omani government purchasers not discriminate against U.S. firms, or in favor of Omani firms, when making covered government purchases in excess of agreed monetary thresholds. As a result of such provisions, U.S. and Omani suppliers will have increased certainty in each other's markets due to strong and transparent disciplines on procurement procedures.

Sub-central (*i.e.*, state and local) government procurement is not covered by this Agreement.

IGPAC notes that:

> *"As a matter of general principle, IGPAC members support the goal of improving transparency and increasing fair market access in government procedures and regulatory decisions that are related to procurement, while preserving the independent authority of state and local governments to adopt legislation, standards and procedures consistent with their experience and interests. … In the event that future negotiations are undertaken to expand the Oman FTA's coverage to include state procurement, state procurement officials would need to be actively consult[ed] during the negotiation process."*

III. Chapter Ten: Investment

The agreement establishes a secure, predictable legal framework for U.S. investors operating in Oman, covering all forms of investment. While state and local governments are subject to the obligations of this Chapter, they will not be required to make any changes to existing laws or regulations that currently may be inconsistent with obligations such as national treatment and most-favored-nation (MFN) treatment. To be sure, with respect to these commitments the United States includes a reservation for existing state-level non-conforming measures ("a grandfather clause"); existing local level non-conforming measures are given the same protection under the terms of this Chapter.

As described in the IGPAC report:

> *"Where agreements are reached with countries such as Oman, which have legal systems structured differently from the United States, inclusion of a wholly separate litigation process, applicable only to foreign commerce and investment, may be viewed as necessary at the moment for creating the secure, predictable legal conditions in such countries that are conducive to attracting and retaining international investment. ….It is hoped that efforts to strengthen and reform the administration of justice in Oman and the Middle Eastern region may ameliorate legitimate concerns in the future about these legal systems."*

IV. Chapter Eleven: Cross-Border Trade in Services

Chapter Eleven covers the supply of services on a cross-border basis, which includes services supplied from the United States into Oman or vice versa, including supply via electronic means, services supplied by a national of a Party in the territory of the other Party, and consumption of services in the other Party. Services supplied by an investment are generally covered under the Investment Chapter but also enjoy the protection of certain provisions in the Cross-Border Services Chapter. While state and local governments are subject to the obligations of this Chapter, they will not be required to make any changes to existing laws or regulations that currently may be inconsistent with Agreement obligations such as market access, national treatment, and most-favored-nation (MFN) treatment. To be sure, with respect to these commitments the United States includes a reservation for existing state level non-conforming measures ("a grandfather clause"); existing local level non-conforming measures are given the same protection under the terms of this Chapter.

Nothing in Chapter Eleven or any other provision of the Agreement requires the privatization or deregulation of any government service, including water supply or distribution services, education services, or health services. The Agreement also excludes services supplied in the exercise of governmental authority from such liberalizing provisions.

The implementation of Chapter Eleven should not require an additional commitment of financial resources by state and local governments.

The IGPAC report comments further that:

> *"State and local governments generally support objectives to liberalize trade in services industries as a means of increasing market access for US firms and for reaching trade development objectives. IGPAC members equally assert that the independent exercise of state and local legislative and regulatory power is critical to protecting citizens' interests and safeguarding the federal system."*

The IGPAC report also notes that a general exemption for existing state and local measures could leave open the possibility of disputes about future changes, highlighting the need for USTR to educate and consult with state and local entities so that they are aware of such constraints upon future actions.

V. Chapter Twelve: Financial Services

Chapter Twelve applies to measures relating to U.S. and Omani financial institutions, investments in financial institutions, and cross-border trade in financial services. The Chapter does not apply to measures relating to public retirement plans or social security systems. While state and local governments are subject to the obligations of this Chapter, they will not be required to make any changes to existing laws or regulations that currently may be inconsistent with Agreement obligations such as national treatment and MFN treatment. Again, with respect to these commitments, the United States includes a reservation for existing state level non-conforming measures ("a grandfather clause"); existing local level non-conforming measures are given the same protection under the terms of this Chapter.

The implementation of Chapter Twelve should not require an additional commitment of financial resources by state and local governments.

VI. Regulatory Interests

The Agreement does not affect the right of the United States and sub-federal governments to establish, maintain, and fully enforce domestic laws protecting consumers, health, safety, and the environment. As are U.S. trade agreements in general, the Agreement is sensitive to, and protective of, our federal system of shared power. The Agreement fully preserves the right of the states to regulate, requiring simply that the legitimate standards that governments impose must be non-discriminatory and transparent, and not be used as disguised barriers to trade. Nothing in the Agreement would automatically preempt or invalidate any state or local laws; nor can a dispute settlement panel or tribunal under the Agreement overturn or change any U.S. federal, state or local law. Only the federal or state governments can change a federal or state law.

VII. Conclusion

States and localities are poised to benefit greatly under the Agreement. This comprehensive agreement would eliminate tariffs, generating export opportunities for U.S. goods and creating jobs for American farmers and workers. It also would provide increased access for U.S. firms to Oman's services sector, in areas such as audiovisual, express delivery, telecommunications, computer and related services, distribution, healthcare, services incidental to mining, construction, architecture and engineering.

Finally, the FTA would support Oman's commitment to transparency, openness, and the rule of law, as well as its efforts on environmental protection and labor, making progress toward the eventual goal of a MEFTA.

We do not believe that state and local governments will need additional resources to deal with the effects of increased trade under the Agreement.